

**REMARKS/ARGUMENTS**

**Claim Rejections Under 35 U.S.C. §112**

The Examiner rejected claims 1-11 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1, 2, 4, 7, and 9 have been amended to address the §112 rejection.

**Claim Rejections Under 35 U.S.C. § 103(a)**

The Examiner rejected claim 1 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,736,642 to Bajer et al (“Bajer”) in view of U.S. Patent No. 5,722,418 to Bro (“Bro”).

**Claim 1**

**Prima facie case of obviousness not established**--Through the decisions of the CCPA and the Court of Appeals for the Federal Circuit, certain well-established principles of claim construction and review have been developed. If these principles are not met, a prima facie case of obviousness under 35 U.S.C. § 103 has not been established and the claim in issue should be allowed. The undersigned respectfully suggests that these tests are not met by the prior art in this case and a prima facie case of obviousness has not been established. These tests will be briefly applied to the individual claims rejected by the proposed combination.

**Obviousness to try and modification or combination of references is not the standard**--The Examiner is not only combining references but he is also modifying them without any support for doing so. For example, the examiner is modifying the Bajer reference to state that Bajer discloses “providing at least two allegories.” Bajer does not use allegories. Bajer states, “First, a plurality of stimuli are presented to a user in the context of a simulation.” (See Abstract). The examiner is stating that these stimuli are equivalent to allegories, as recited in claim 1. However, a “simulation,” as defined by The American Heritage College Dictionary, is “the imitation or representation, as of a potential situation; representation of the operation or features of one process system through the use of another.” (*The American Heritage College Dictionary* 2000). “Simulation” is also defined as an “imitation or enactment, as of something anticipated or in testing.” (*Webster’s Encyclopedic Unabridged Dictionary of the English Language* 1996). In claim 1, “allegory” is defined as, “a story, song, movie, diagram, poem, image, picture, or the like in which the meaning is symbolically expressed through fictional figures and actions, words, diagrams, pictures, or symbols regarding truth or generalizations about a practice, belief, human behavior, or natural phenomenon; a symbolic story in which it is composed of symbols or is itself symbolic.” (see paragraph 0029) A “symbol” is defined as “a thing that implies something more than its obvious, immediate, and direct meaning and comes to typify, represent, or recall something regardless of whether that something is totally known, understood, or defined.” (see paragraph 0045) As can be seen from the definitions, simulations seek to represent real-life situations, whereas the definition of allegory, which includes the definition of symbol, implies something more than its obvious, immediate, and direct meaning.

Therefore, the simulations of Bajer are not allegories, as defined and recited in claim 1 of the present application.

In addition, the examiner is improperly modifying Bajer to include choosing a first allegory based upon the answers to the series of questions. In Bajer, as shown in column 10, lines 14-40, the invention is broken up into three discrete stages, which are conducted in order. So, the allegories chosen (even though Bajer does not actually contain any allegories) are not chosen based upon the answers to the series of questions. The phases are Awareness, Validation, and Action in that order in every case. In the present invention, the allegories are chosen based upon the answers to the questions. In Bajer, the phases are always sequential, in the order given, whereas in the present invention, the answers to the questions determine which allegory is presented. A prima facie case of obviousness is not made out when two references are improperly combined and then modified further to meet the limitations of the claim in issue.

**All claim limitations must be considered--**35 U.S.C. § 103 requires that the subject matter as a whole be reviewed. There are certain limitations of claim 1 which are still not shown in the combination proposed by the Examiner. For example, neither Bajer nor Bro disclose “providing at least two allegories,” “choosing a first allegory based upon the answers to the series of questions,” “choosing at least a second allegory based upon the answers to the series of questions and comments from the audience during the relating of the first allegory,” and “interrelating the allegories based upon the answers, the questions from the audience during relating of the first allegory, the comments from the audience during relating of the first allegory,

the questions from the audience during relating of the second allegory, and the comments from the audience during relating of the second allegory” all as recited in amended claim 1. The arguments relating to Bajer and Bro not including allegories is related in the section above and is herein incorporated by reference, as well as the arguments related to choosing allegories. With respect to interrelating the allegories based on the answers, Bajer states, “In the first stage of the training, the user learns that humans make assumptions all the time. The awareness section of the training is used to train the learner to become aware of the assumptions they are making. The second phase of the training shows the learner...that they must validate those assumptions.” (col. 10, lines 15-26). Firstly, as mentioned above, the Awareness, Validation, and Action sections are not allegories, as defined in the present invention. Secondly, during the Validation step, “a list box contains a number of questions that the learner can use....the learner asks questions and is asked to recognize when they are making assumptions, and then to validate those assumptions.” (see col. 14, lines 55-61) This is not “interrelating the allegories based upon the answers...” as recited in amended claim 1. The Validation step is merely validate assumptions made within the Validation step, which does not need to bring in the Awareness step. Thirdly, amended claim 1 is interrelating the allegories based upon answers, questions, and comments from both the first and second allegories. So, even if the sections of Bajer were considered allegories, and even if the Validation step were considered to be “interrelating the allegories,” the Validation step only uses questions from the Validation step. According to 35 U.S.C. § 103, it must be considered and given proper weight if the correct result is to be reached.

**Bajer teaches away**—In Bajer, is confined to three particular steps, and the steps of the invention, and the order in which the steps are performed are always the same. In fact, the sequence appears crucial to the functioning of the invention. Also, Bajer uses a statistical, scientific method for the invention. In particular, Bajer uses an algorithm to assist the learner, in the form of a virtual coach. Therefore, Bajer actually teaches away from the invention recited in claim 1.

The Examiner rejected claims 2-11 under 35 U.S.C. § 103(a) as unpatentable over Bajer in view of U.S. Patent No. 6,077,085 to Parry (“Parry”), and further in view of Bro.

### **Claim 2**

**Prima facie case of obviousness not established**--Through the decisions of the CCPA and the Court of Appeals for the Federal Circuit, certain well-established principles of claim construction and review have been developed. If these principles are not met, a prima facie case of obviousness under 35 U.S.C. § 103 has not been established and the claim in issue should be allowed. The undersigned respectfully suggests that these tests are not met by the prior art in this case and a prima facie case of obviousness has not been established. These tests will be briefly applied to the individual claims rejected by the proposed combination.

**Obviousness to try and modification or combination of references is not the standard**--The Examiner is not only combining references but he is also modifying them without

any support for doing so. The arguments from claim 1 are equally applicable to claim 2, and are herein incorporated by reference. A prima facie case of obviousness is not made out when two references are improperly combined and then modified further to meet the limitations of the claim in issue.

**All claim limitations must be considered**--35 U.S.C. § 103 requires that the subject matter as a whole be reviewed. There are certain limitations of claim 2 which are still not shown in the combination proposed by the Examiner. The arguments from claim 1 are equally applicable to claim 2, and are herein incorporated by reference. In addition, none of the cited references discloses an associated instructor providing at least one assumption, as recited in amended claim 2. In the cited references, the assumptions are provided by the user, and are particular to the user, whereas in the present invention, the assumptions are provided by the instructor, and are general assumptions to be understood by the audience, and provide context for the allegory. For example, Bajer states, "Should the learner have chosen the correct assumption..." (see col. 11, line 54). In the present invention, the assumptions are given as guidelines by the instructor and are not evaluated for correctness or incorrectness. Parry does not disclose any ideas related to questions as recited in amended claim 2. In Parry, the questions are given to the students and are evaluate for a right or wrong answer, whereas in the present invention, the questions are used to determine the starting point of the method. Also, Parry, like Bajer, uses a statistical method, whereas amended claim 2 uses a non-statistical, empirical method. In addition, the new claims added provide additional differences between Bajer, Bro,

Parry, and the present invention, in that the questions do not have right or wrong answers, and the answers to the questions are given in real time. The validations in Bajer are only recorded so there is no immediate feedback, unlike the present invention, in which the instructor responds to the questions, answers, and comments in real time. According to 35 U.S.C. § 103, it must be considered and given proper weight if the correct result is to be reached.

**Bajer, Bro, and Parry teach away**—The arguments presented with respect to claim 1 are equally applicable to claim 2 and are herein incorporated by reference.

The arguments presented with respect to claims 1 and 2 are equally applicable to claims 3-11, and are herein incorporated by reference.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

**BROUSE MCDOWELL**

January 15 2007  
Date

A handwritten signature in dark ink, appearing to read 'Daniel A. Thomson', is written over a horizontal line.

Daniel A. Thomson

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